

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 67 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA SD/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

MOHMED EZAZ HAJI QURESHI

Versus

AMC

Appearance:

MR MB GANDHI for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/07/2000

C.A.V. JUDGEMENT

1. This appeal is preferred from the order passed below the application at Ex.6 in Civil Suit No.918 of 1994 whereby the prayer to restrain the respondent from taking over possession of a shop of the original plaintiff was rejected.

2. The original plaintiff has come into possession of the premises in question through another person who was the original tenant of the respondent. The original

sub-tenant of the original tenant has also expired. Although the appellant was found to be in possession, the competent authority had not joined him as a party in the proceedings for eviction. It is also a fact that the proceedings were initiated in 1980; the original tenant was made a party and he had contested the matter and after hearing him the eviction order was passed. On appreciation of evidence, the learned Judge of the trial Court has arrived at a finding that the appellant came in possession of the suit premises only in 1991, by which time the proceedings for eviction were already terminated. Thus, the appellant is found to have come into possession of the premises without authority or consent of the respondent for which he was asked to vacate the premises. The appellant having failed to establish any legal right to possess the property, protection was denied to him. Accordingly, the appellant having no prima facie case and the trial Court having not been satisfied even on the point of its jurisdiction, the application of the appellant was dismissed by the impugned order.

3. The learned advocate appearing for the appellant has made out no case for interfering with the findings recorded and the conclusions reached by the trial Court. And otherwise, none of the grounds of the appeal having been substantiated, the appeal is required to be dismissed.

4. In the result, the appeal is dismissed with no order as to costs.

Sd/-

(KMG Thilake)

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